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3                   **UNITED STATES DISTRICT COURT**  
4                   **DISTRICT OF NEVADA**

5                   \* \* \*

6       UNITED STATES OF AMERICA                   }

7                          Plaintiff,                      }

8       vs.    }

9       CASEY LUCZAK,                              }

10                          Defendant.                   }

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11   2:08-CR-00161-PMP-GWF

12   **ORDER**

13   Before the Court for consideration is Defendant Luczak's fully briefed  
14 Motion Under 28 U.S.C. § 2255 to Vacate, Set Aside, or Correct Sentence by a  
Person in Federal Custody (Doc. #116) filed February 28, 2012.

15   Defendant Luczak asserts three grounds to support his motion. First,  
16 Defendant Luczak contends that prosecutorial vindictiveness and trial misconduct  
17 violated his Fifth Amendment right to due process. Second, Defendant Luczak  
18 contends that he was denied effective assistance of counsel under the Sixth  
19 Amendment. Third, Luczak argues that the sentence imposed by the Court was  
20 unconstitutionally extreme.

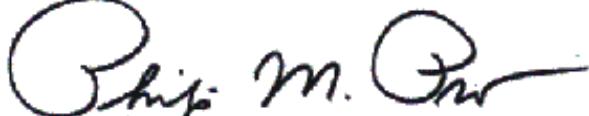
21   As argued in the Government's Response (Doc. #133), Defendant Luczak  
22 could, and should have raised Grounds 1 and 3 on direct appeal. This he failed to  
23 do, and as Luczak has not shown cause and prejudice, or actual innocence, these  
24 claims are procedurally defaulted and will not be considered by this Court. *Bousley*  
25   *v. United States*, 523 U.S. 614 (1998.) Moreover, even were the Court to consider  
26 Defendant's first claim on the merits, it is clear from the record of these proceedings

1 and the Affidavits of counsel attached to the Government's Response (Doc. #133) it  
2 is clear his claim of prosecutorial misconduct is meritless. Similarly, without merit  
3 is Defendant Luczak's claim that the length of his sentence somehow violated the  
4 Eight Amendment to the United States Constitution.

5 Finally, for the reasons set forth in the Government's Opposition (Doc.  
6 #133), the Court finds that Defendant's Second Ground for Relief claiming that his  
7 counsel was ineffective, must be rejected. Defendant Luczak has demonstrated  
8 neither that the representation of his attorney fell below a reasonable level of  
9 professional assistance, nor that he has suffered prejudice as a result. *Strickland v.*  
10 *Washington*, 466 U.S. 668 (1984).

11 **IT IS THEREFORE ORDERED** that Defendant Casey Luczak's Motion  
12 Under 28 U.S.C. § 2255 to Vacate, Set Aside, or Correct Sentence by a Person in  
13 Federal Custody (Doc. #116) is **DENIED**.

14 DATED: August 8, 2012.

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17 PHILIP M. PRO  
18 United States District Judge  
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